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Morton Beroza

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USDA, ARS, OTT
5601 SUNNYSIDE AVE
RM 4-1159
BELTSVILLE, MD 20705-5131

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PARSLEY, DAVID J

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/803,121
Filing Date: March 17, 2004
Appellant(s): BEROZA, MORTON

Gail E. Poulos
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1-10-07 appealing from the Office action mailed 6-22-06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1,056,535	Grimes et al.	3-1913
2,176,345	Hurwitt	10-1938
2,254,948	Kubalek	12-1939

6,543,181	Baker et al.	4-2003
6,585,990	Huang	7-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,056,535 to Grimes et al. in view of U.S. Patent No. 6,543,181 to Baker et al. or Grimes et al. in view of U.S. Patent No. 6,585,990 to Huang.

Referring to claims 18 and 21, Grimes et al. discloses a trap comprising a device/method for providing uniform emission of a flying insect attractant, consisting of a container – at 10,14, having a top surface, a bottom surface and side walls – see for example figure 2, having a composition of at least one volatile liquid attractant – at 11, for targeting at least one flying insect species, and a first opening – proximate 16 in the top of the container – see for example figure 2 to receive an adjustable wick – 16, frictionally inserted into the first opening of the container – see for example figure 2, wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission – see for example figure 2, and a second opening – proximate 14a, in the top of the container, smaller than the first opening and large enough to prevent film closure by a liquid – see for example figure 2, wherein the second

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opening maintains air pressure in the container wherein the container emits the at least one volatile attractant for at least about six months without replenishment of the attractant – see for example figure 2. Further, the Grimes et al. reference discloses hanging the device – see at 13 in figure 1. Grimes et al. does not disclose a volatile liquid attractant that is specific for one targeted flying insect species. Baker et al. does disclose volatile liquid attractant that is specific for one targeted flying insect species – see column 2 lines 62-67 and column 2 lines 1-34 where the specific one targeted insect is fruit flies. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Grimes et al. and add the volatile liquid attractant being specific for one targeted flying insect species of Baker et al., so as to allow for the device to only eradicate the selected species of animals intended by the device. Further, the Huang reference discloses volatile liquid attractant that is specific for one targeted flying insect species – see column 3 lines 39-48 where the targeted insect is houseflies. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Grimes et al. and add the volatile liquid attractant being specific for one targeted flying insect species of Huang, so as to allow for the device to only eradicate the selected species of animals intended by the device.

Claims 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grimes et al. as modified by Huang as applied to claims 18 and 21 above.

Referring to claims 19 and 22, Grimes et al. as modified by Huang further discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick – see for example at 3,11 in figure 1a and column 5 lines 48-63 of Huang.

Claims 18-19 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,254,948 to Kubalek in view of Baker et al. or Kubalek in view of Huang.

Referring to claim 18, 21 and 23, Kubalek discloses a trap comprising a device/method for providing uniform emission of a flying insect attractant, consisting of a container – at 10,13,14, having a top surface, a bottom surface and side walls – see for example figures 1-2, having a composition of at least one volatile liquid attractant – at 12,23, for targeting at least one flying insect species, and a first opening – proximate 11, in the top of the container – see for example figures 1-2, to receive an adjustable wick – at 11, frictionally inserted into the first opening of the container – see for example figures 1-2, wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission – see for example figures 1-2, and a second opening – at 19 or 20, in the top of the container, smaller than the first opening and large enough to prevent film closure by a liquid – see for example figures 1-2, wherein the second opening maintains air pressure in the container wherein the container emits the at least one volatile attractant for at least about six months without replenishment of the attractant – see for example figures 1-2 page 1 column 2 lines 34-37 of Kubalek. Further, the Kubalek reference discloses hanging the device – see at 21-22. Kubalek does not disclose a volatile liquid attractant that is specific for one targeted flying insect species. Baker et al. does disclose volatile liquid attractant that is specific for one targeted flying insect species – see column 2 lines 62-67 and column 3 lines 1-34 where the specific one targeted insect is fruit flies. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kubalek and add the volatile liquid attractant being specific for one targeted flying insect species of Baker et al., so as to allow for the device to only eradicate the selected

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species of animals intended by the device. Further, the Huang reference discloses volatile liquid attractant that is specific for one targeted flying insect species – see column 3 lines 39-48 where the targeted insect is houseflies. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kubalek and add the volatile liquid attractant being specific for one targeted flying insect species of Huang, so as to allow for the device to only eradicate the selected species of animals intended by the device.

Referring to claims 19 and 22, Kubalek as modified by Baker et al. further discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick – see for example figure 2 and page 1 column 2 lines 26-37 of Kubalek.

Referring to claims 19 and 22, Kubalek as modified by Huang further discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick – see for example figure 2 and page 1 column 2 lines 26-37 of Kubalek.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grimes et al. as modified by Baker et al. or Grimes et al. as modified by Huang as applied to claim 18 above, and further in view of U.S. Patent No. 2,176,345 to Hurwitt. Grimes et al. as modified by Baker et al. and Grimes et al. as modified by Huang further disclose the first opening – proximate 16 of Grimes et al., being of a size to frictionally hold a wick – at 16 of Grimes et al. – see for example figure 2 of Grimes et al., and the second opening – proximate 14a of Grimes et al., is elongated and narrower than the first opening – see for example figure 2 of Grimes et al. Grimes et al. as modified by Baker et al. and Grimes et al. as modified by Huang do not disclose the first and

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second opening form a single opening. Hurwitt does disclose the first opening – at 22 as seen in figure 1, and the second opening – at any of items 24 as seen in figure 1, form a single opening – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of or Grimes et al. as modified by Baker et al. or Grimes et al. as modified by Huang and add the first and second opening forming a single opening of Hurwitt, so as to allow for the liquid to be quickly absorbed by the wick and dispense the liquid.

(10) Response to Argument

Regarding claims 18 and 20-21, the Grimes et al. reference US 1056535 discloses an adjustable wick – at 16,17, in that as seen in figures 2 and 5, the wick – at 16, is a separate element from the container – at 15 and therefore can be moved upwards and downwards inside the container – at 15 to be adjusted. Further, Grimes et al. discloses the device has a volatile attractant used on flies as seen in lines 1-8 and 72-88 of page 1. Further, Grimes et al. discloses a portion of the wick – at 16,17, is exposed to an atmosphere in that the top portion of the wick is exposed to an atmosphere inside the top of the container – at 10 or to the atmosphere outside the container – at 10 through the openings in items 18 and the wick is exposed at its bottom surface – at the bottom of 16, to the atmosphere inside the container – at 10 as seen in figure 5. Further, Grimes et al. discloses a second opening – see proximate 14a in figures 2 and 5. Further, Grimes et al. discloses the container emits the volatile attractant for at least about six months without replenishment of the attractant in that as seen in page 1 lines 57-84, a chemical and water are used as the attractant and thus the chemical and water are capable of lasting at least six months based on the atmospheric conditions acting on the container. Further, the Baker et al. reference US 6543181 is not used to disclose the adjustable wick as seen in section (9) above and therefore

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this argument is moot. Further, Baker et al. discloses a volatile attractant only used on one insect being *Drosophila* fruit flies as seen in column 2 lines 62-67 and column 2 lines 1-34. Further, it is deemed that it is proper to combine the Grimes et al. and Baker et al. references in that each of these references is related to insect trapping/attracting devices and therefore have similar function and thus are combinable given the motivation to combine stated in section (9) above.

Regarding claims 18 and 20-21, the Grimes et al. reference US 1056535 discloses an adjustable wick – at 16,17, in that as seen in figures 2 and 5, the wick – at 16, is a separate element from the container – at 15 and therefore can be moved upwards and downwards inside the container – at 15 to be adjusted. Further, Grimes et al. discloses the device has a volatile attractant used on flies as seen in lines 1-8 and 72-88 of page 1. Further, Grimes et al. discloses a portion of the wick – at 16,17, is exposed to an atmosphere in that the top portion of the wick is exposed to an atmosphere inside the top of the container – at 10 or to the atmosphere outside the container – at 10 through the openings in items 18 and the wick is exposed at its bottom surface – at the bottom of 16, to the atmosphere inside the container – at 10 as seen in figure 5. Further, Grimes et al. discloses a second opening – see proximate 14a in figures 2 and 5. Further, Grimes et al. discloses the container emits the volatile attractant for at least about six months without replenishment of the attractant in that as seen in page 1 lines 57-84, a chemical and water are used as the attractant and thus the chemical and water are capable of lasting at least six months based on the atmospheric conditions acting on the container. Further, the Huang reference US 6585990 discloses volatile liquid attractant that is specific for one targeted flying insect species – see column 3 lines 39-48 where the targeted insect is houseflies. Further, Huang discloses chemicals are used in the volatile attractant and thus the attractant is capable of lasting six

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months – see column 6 lines 5-67 and column 7 lines 1-60. Further, it is deemed that it is proper to combine the Grimes et al. and Huang references in that each of these references is related to insect trapping/attracting devices including a wick structure and therefore have similar structure and function and thus are combinable given the motivation to combine stated in section (9) above.

Regarding claim 23, the rejection based on the Grimes et al. reference as the primary reference is withdrawn in that appellant's arguments are persuasive.

Regarding claims 19 and 22, appellant relies upon the same arguments to independent claims 18 and 21 and therefore see the response to these arguments above in the section (10) of this office action.

Regarding claims 18, 20-21 and 23, the Kubalek reference US 2254948 discloses a frictionally adjustable wick – at 11, which is adjustable since it is separate from the container – at 10, 14 and is held by the container and can be moved upwardly and downwardly in the container as seen in figures 1-2. Further, Kubalek discloses at least one volatile insect attractant which lasts over a period of at least six months as seen in page 1 column 2 lines 22-33, in which a poison such as lead arsenate is combined with water and sugar or molasses as an attractant with the poison lasting indefinitely and thus capable of lasting six months. Further, Kubalek discloses a second opening – at 19 or 20, which allows air to enter the container – at 10 as seen in figures 1-2. Further, Kubalek discloses the wick – at 11 is exposed to an atmosphere – the outside atmosphere at the top of the wick and the inside of the container at the bottom of the wick as seen in figures 1-2. Further, Baker et al. discloses a volatile attractant only used on one insect being *Drosophila* fruit flies as seen in column 2 lines 62-67 and column 2 lines 1-34. Further, it

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is deemed that it is proper to combine the Kubalek and Baker et al. references in that each of these references is related to insect trapping/attracting devices and therefore have similar function and thus are combinable given the motivation to combine stated in section (9) above.

Regarding claims 18, 20-21 and 23, the Kubalek reference US 2254948 discloses a frictionally adjustable wick – at 11, which is adjustable since it is separate from the container – at 10,14 and is held by the container and can be moved upwardly and downwardly in the container as seen in figures 1-2. Further, Kubalek discloses at least one volatile insect attractant which lasts over a period of at least six months as seen in page 1 column 2 lines 22-33, in which a poison such as lead arsenate is combined with water and sugar or molasses as an attractant with the poison lasting indefinitely and thus capable of lasting six months. Further, Kubalek discloses a second opening – at 19 or 20, which allows air to enter the container – at 10 as seen in figures 1-2. Further, Kubalek discloses the wick – at 11 is exposed to an atmosphere – the outside atmosphere at the top of the wick and the inside of the container at the bottom of the wick as seen in figures 1-2. Further, the Huang reference US 6585990 discloses volatile liquid attractant that is specific for one targeted flying insect species – see column 3 lines 39-48 where the targeted insect is houseflies. Further, Huang discloses chemicals are used in the volatile attractant and thus the attractant is capable of lasting six months – see column 6 lines 5-67 and column 7 lines 1-60. Further, it is deemed that it is proper to combine the Grimes et al. and Huang references in that each of these references is related to insect trapping/attracting devices including a wick structure and therefore have similar structure and function and thus are combinable given the motivation to combine stated in section (9) above.

Regarding claims 19 and 22, appellant relies upon the same arguments to independent claims 18 and 21 and therefore see the response to these arguments above in the section (10) of this office action.

Regarding claim 20, Hurwitt US 2176345 discloses the first opening – at 22 as seen in figure 1, and the second opening – at any of items 24 as seen in figure 1, form a single opening at the top portion of the container – see for example figure 1, with the first opening holding the wick – at 17,23 as seen in figure 1. Further, the combination of the Hurwitt reference with Grimes et al. as modified by Huang or Grimes et al. as modified by Baker et al. is deemed proper in that the Hurwitt reference relates to an insect trap with a wick structure and thus has similar structure and function to Grimes et al. and therefore is combinable with Grimes et al. given the motivation to combine stated above in section (9) of this action.

Regarding claim 20, Hurwitt US 2176345 discloses the first opening – at 22 as seen in figure 1, and the second opening – at any of items 24 as seen in figure 1, form a single opening at the top portion of the container – see for example figure 1, with the first opening holding the wick – at 17,23 as seen in figure 1. Further, the combination of the Hurwitt reference with Kubalek as modified by Huang or Kubalek as modified by Baker et al. is deemed proper in that the Hurwitt reference relates to an insect trap with a wick structure and thus has similar structure and function to Kubalek and therefore is combinable with Grimes et al. given the motivation to combine stated above in section (9) of this action.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

David Parsley



Patent Examiner



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Conferees:

Kurt Rowan



Meredith Petravick

